

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1292**

State of Minnesota, by Dr. Brooke Cunningham, Commissioner of Health in her official
capacity,
Respondent,

vs.

The Iron Waffle Coffee Company LLC, d/b/a The Iron Waffle Coffee Company,
Appellant.

**Filed May 8, 2023
Affirmed
Reilly, Judge**

Ramsey County District Court
File No. 62-CV-20-5745

Keith Ellison, Attorney General, Kaitrin Vohs, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Richard Dahl, Dahl Law Firm PA, Brainerd, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Reilly, Judge; and Larson,
Judge.

SYLLABUS

Minnesota Statutes section 588.10 (2022), which restricts district courts from imposing a fine greater than \$250 per day on a person guilty of contempt, applies only to criminal contempt and therefore does not restrict the district court when imposing a sanction for constructive civil contempt. Nor did the district court abuse its discretion by imposing sanctions under its inherent authority based on the party's failure to comply with the district court's orders.

OPINION

REILLY, Judge

Respondent-agency brought a civil-enforcement action against appellant-restaurant to enforce the governor's emergency executive orders aimed at mitigating the spread of COVID-19. After appellant repeatedly flouted the executive orders, respondent revoked appellant's food-and-beverage license. Appellant did not request a contested-case hearing to challenge the agency's actions but continued operating its business without a license. The district court issued a temporary injunction and contempt order enjoining appellant from operating a food-and-beverage establishment without a license and imposed sanctions for constructive civil contempt. Because (1) Minnesota Statutes section 588.10 does not restrict the district court's authority to impose sanctions for constructive civil contempt, (2) the district court did not abuse its discretion by imposing contempt sanctions under its inherent authority given the facts here, and (3) appellant forfeited its remaining arguments, we affirm.

FACTS

Appellant The Iron Waffle Coffee Company LLC, d/b/a The Iron Waffle Coffee Company (Iron Waffle), operated a restaurant in Lake Shore, Minnesota. Until December 9, 2020, Iron Waffle held a food-and-beverage license issued by the Minnesota Department of Health (MDH).¹

¹ Iron Waffle started this lawsuit against then-commissioner Jan Malcolm. Jan Malcolm is no longer the commissioner of MDH. This court ordered that the current commissioner, Dr. Brooke Cunningham, be substituted for Jan Malcolm in this matter. *See* Minn. R. Civ. App. P. 143.04.

In response to the COVID-19 pandemic, Governor Walz issued an emergency executive order (EEO 20-74) encouraging food-and-beverage establishments to act in ways that “mitigate[d] the potential transmission of COVID-19.” Emerg. Exec. Order No. 20-74, *Continuing to Safely Reopen Minnesota’s Economy and Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (June 5, 2020). On July 22, 2020, the governor amended EEO 20-74 by issuing another emergency executive order (EEO 20-81). Emerg. Exec. Order No. 20-81, *Requiring Minnesotans to Wear a Face Covering in Certain Settings to Prevent the Spread of COVID-19* (July 22, 2020). EEO 20-81 required Minnesotans to “wear a face covering in indoor businesses and indoor public settings” and further required businesses to “post one or more signs that are visible to all persons—including workers, customers, and visitors—instructing them to wear face coverings.” *Id.*

In August, September, and October 2020, MDH conducted on-site inspections at Iron Waffle to investigate whether it was complying with the executive orders. Four times in August 2020, MDH visited Iron Waffle and discovered that it was not requiring its employees to wear face coverings. Iron Waffle also posted a sign stating that face coverings were optional for customers. MDH ordered Iron Waffle to remedy these violations, but Iron Waffle did not. On August 20, 2020, MDH sent a certified letter to Iron Waffle threatening enforcement action. Iron Waffle did not respond to the letter. MDH returned to Iron Waffle in September 2020 and observed that none of the employees were wearing face coverings. On September 24, 2020, MDH mailed a Combination Administrative Penalty Order (CAPO) assessing a penalty of \$9,500 for Iron Waffle’s failure to comply with the executive orders. The CAPO stated that a portion of the penalty

could be forgiven if Iron Waffle complied with MDH's concerns. The CAPO also explained that Iron Waffle could request a contested-case hearing before an administrative-law judge. Iron Waffle did not respond to the CAPO or request a hearing. A short time later, MDH visited Iron Waffle and saw that two employees were not wearing face coverings and Iron Waffle continued displaying a sign stating that face coverings were optional for customers.

On November 16, 2020, MDH sent a letter to Iron Waffle noting that it had not taken the corrective actions outlined in the CAPO. MDH wrote that Iron Waffle still owed the \$9,500 penalty and that Iron Waffle's license would be revoked 20 days after receipt of the letter unless Iron Waffle complied with the corrective actions specified in the CAPO and paid the penalty. MDH again advised Iron Waffle that it could request a contested-case hearing to challenge MDH's proposed action. Iron Waffle did not request a contested-case hearing. On December 5, 2020, MDH conducted a follow-up inspection and saw two employees who were not wearing face coverings. Four days later, MDH revoked Iron Waffle's license for failure to follow the executive orders. Three days after that, MDH returned to Iron Waffle and observed that the restaurant was open, now operating without a license, and that the employees were not wearing face coverings.

On December 17, 2020, MDH filed a motion for a temporary restraining order and a temporary injunction to prevent Iron Waffle from operating its business without a license. MDH also sought to enforce payment of the \$9,500 penalty. On December 18, 2020, the district court granted MDH's motion for a temporary restraining order. The order provided that Iron Waffle was "prevented, restrained, and enjoined from operating [the restaurant]

as a food and beverage service establishment without obtaining a license from [MDH].” The district court also ordered Iron Waffle to “certify in writing to the State that it is no longer operating [the restaurant] as a food and beverage service establishment” within one hour of receiving a copy of the district court’s order. The district court ordered counsel to appear for a hearing on MDH’s motion for a temporary injunction “pending [a] final ruling on the Complaint against [Iron Waffle].”

Following a hearing, the district court issued an order on May 18, 2021, granting MDH’s motion for a temporary injunction. The district court began by noting that Iron Waffle “failed to avail itself of the right to file an administrative appeal from the orders issued by [MDH].” The district court determined that Iron Waffle’s sole avenue to contest MDH’s revocation of Iron Waffle’s license was an administrative appeal and a contested-case hearing. Because Iron Waffle failed to pursue that remedy, the administrative orders became final and “non-reviewable by this court or by any other court.” The district court then applied the *Wadena* factors and the *Dahlberg* factors and concluded that a temporary injunction was supported under either standard. *See Wadena Implement Co. v. Deere & Co.*, 480 N.W.2d 383, 389 (Minn. App. 1992) (holding that injunctive relief may be granted under the statute authorizing such relief when (1) the prerequisites for the injunctive remedy have been shown; and (2) the injunction would fulfill the legislature’s purpose), *rev. denied* (Minn. Mar. 26, 1992); *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (Minn. 1965) (articulating five factors to be considered by a district court when determining whether a temporary injunction is appropriate).

Despite the district court's orders, Iron Waffle continued operating its business without a license. MDH sought an order to show cause and an order for contempt to secure compliance with the May 18, 2021 temporary injunction order. Following the show-cause hearing, the district court issued an order on June 29, 2021, holding that Iron Waffle was in constructive civil contempt for ignoring the district court's orders. The district court ordered Iron Waffle to pay \$2,000 for each day it continued operating without a license after June 22, the date of the show-cause hearing. On July 20, 2021, the district court ordered that judgment be entered in favor of MDH for \$22,000 based on Iron Waffle operating without a license for eleven days on June 24-28, June 30, and July 1-5, 2021. Judgment was entered on July 20, 2021 and docketed on July 21, 2021. Iron Waffle did not timely appeal this judgment.

Instead, Iron Waffle appealed the May 18, 2021 order granting temporary injunctive relief and the June 29, 2021 contempt order. *State by Malcolm v. Iron Waffle Coffee Co. LLC*, No. A21-0892, 2022 WL 589247, at *1 (Minn. App. Feb. 28, 2022), *rev. denied* (Minn. May 31, 2022). This court affirmed the district court, holding that it did not abuse its discretion in issuing the temporary injunction or the contempt order. *Id.* at *5-7. We also addressed Iron Waffle's argument that the district court's decision to issue the temporary injunction was an abuse of discretion because MDH's underlying decision to revoke Iron Waffle's license was improper. *Id.* at *5. We agreed with the district court's reasoning that MDH's decision to revoke the license was a final agency decision and could no longer be reviewed by either the district court or by a reviewing court. *Id.* at *7.

MDH continued to conduct inspections at Iron Waffle. Between August 12 and August 29, 2021, MDH saw that Iron Waffle was open daily for business. Iron Waffle was open on at least 18 days after the district court issued the temporary injunction and the contempt order. On August 16, 2021, MDH moved for an order enforcing the contempt order and entering judgment in MDH's favor. MDH presented evidence of 49 new violations of the district court's orders after the June 29, 2021 contempt order. Iron Waffle did not contest MDH's assertion that it committed these violations. On September 9, 2021, the district court granted MDH's motion and ordered entry of judgment of \$2,000 for each of the 49 additional uncontested violations of the district court's orders, for a total of \$98,000.

On April 12, 2022, MDH moved for summary judgment alleging that Iron Waffle "purposefully and openly operated its food and beverage service establishment without a license," and that MDH was entitled to permanent injunctive relief and administrative penalties. Iron Waffle did not dispute MDH's claims but argued that the revocation of its license was invalid. On July 20, 2022, the district court granted MDH's summary-judgment motion. The district court issued a permanent injunction prohibiting Iron Waffle from operating a food-and-beverage establishment without a license. Relying on our decision in *Iron Waffle Coffee Co. LLC*, 2022 WL 589247, at *1, the district court also reiterated that MDH's decision to revoke Iron Waffle's license was a final agency decision and was no longer subject to judicial review.

Iron Waffle appeals.

ISSUE

Does Minnesota Statutes section 588.10 restrict the district court's authority to impose civil contempt sanctions and, if not, did the district court abuse its discretion by imposing sanctions for constructive civil contempt based on the party's failure to comply with the district court's orders?

ANALYSIS

Iron Waffle challenges the district court's imposition of contempt sanctions. We conduct a two-part inquiry. First, we consider whether a district court may impose civil contempt sanctions of over \$250 per day, considering Minn. Stat. § 588.10, which penalizes criminal contempt. Second, we consider whether—assuming section 588.10 does not restrict the district court's authority to impose civil contempt sanctions—the district court abused its discretion here by imposing sanctions for constructive civil contempt.²

We turn first to a consideration of whether section 588.10 restricts a district court's authority to impose civil contempt sanctions. This presents a question of statutory interpretation, which we review de novo. *City of Oronoco v. Fitzpatrick Real Est., LLC*, 883 N.W.2d 592, 595 (Minn. 2016).

Minnesota caselaw categorizes a contempt order as either criminal or civil. *Knajdek v. West*, 153 N.W.2d 846, 848 (Minn. 1967). The distinction is based on the purpose of

² Iron Waffle also attempts to renew its arguments challenging the underlying revocation of its food-and-beverage license. As we previously concluded, Iron Waffle forfeited this argument by failing to administratively appeal the revocation decision and we do not reach it.

the contempt order. *Id.* The primary purpose of criminal contempt orders is punitive and is designed to vindicate the court’s authority by punishing the contemnor for past behavior. *Minn. State Bar Ass’n v. Divorce Assistance Ass’n, Inc.*, 248 N.W.2d 733, 741 (Minn. 1976). A civil contempt order is intended to be “remedial rather than punitive because its purpose is to coerce compliance with [a court] order, not to vindicate the authority of the court.” *Mower Cnty. Hum. Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996); *see also Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968) (noting that the purpose of a civil contempt proceeding is to secure compliance with an order from the district court). Additionally, the nature of the contempt may be either direct or constructive. Minn. Stat. § 588.01, subd. 1 (2022). Direct contempt occurs in the presence of the court, *id.*, subd. 2 (2022), while contempt outside the immediate presence of the court is constructive contempt, *id.*, subd. 3 (2022). Disobedience of any lawful order of the court may constitute constructive contempt. Minn. Stat. § 588.01, subd. 3.

The district court found Iron Waffle to be in constructive civil contempt. The basis for the district court’s contempt order is that Iron Waffle ignored the district court’s temporary injunction by remaining open without a license from MDH to operate a food-and-beverage establishment. The district court ordered Iron Waffle to pay \$2,000 for each day it operated its restaurant without a license. The district court sanctioned Iron Waffle \$2,000 for 11 violations of the district court’s orders occurring on June 24-28, June 30, and July 1-5, 2021, and \$98,000 for 49 more violations occurring after those dates.³

³ To the extent that Iron Waffle challenges the \$22,000 penalty, this challenge is untimely. The district court ordered Iron Waffle to pay \$22,000 on July 20, 2021. Judgment was

Iron Waffle does not contest these facts. Instead, Iron Waffle claims the district court exceeded its statutory authority by imposing contempt sanctions of more than \$250, which violated Minn. Stat. § 588.10. This section provides that a person adjudged guilty of contempt is subject to punishment of “a fine of not more than \$250, or by imprisonment in the county jail . . . for not more than six months, or by both.” Minn. Stat. § 588.10. But this statute applies in a criminal, not civil, context. *See Peterson v. Peterson*, 153 N.W.2d 825, 828 n.5 (Minn. 1967) (stating that section 588.10 applies to constructive criminal contempt sanctions); *see also* Minn. Stat. § 588.02 (2022) (authorizing court to “*punish* a contempt by fine or imprisonment, or both” (emphasis added)); Minn. Stat. § 588.09 (2022) (requiring a hearing after arrest on contempt charges).

Caselaw likewise recognizes that section 588.10 does not restrain the district court’s authority to impose sanctions to compel compliance with its orders. In *State by Johnson v. Sports & Health Club, Inc.*, the appellants asserted that the district court violated section 588.10 by imposing a sanction of \$300 per day based on the appellants’ failure to abide by the district court’s order. 392 N.W.2d 329, 336 (Minn. App. 1986). We rejected appellants’ argument, reasoning:

The purpose of fining or incarcerating an individual for civil contempt is to induce future compliance. To adopt the

entered on the same date and docketed on July 21, 2021. Iron Waffle appealed the district court’s contempt order and we affirmed. *Iron Waffle Coffee Co. LLC*, No. A21-0892, 2022 WL 589247, at *7. It is unclear whether Iron Waffle directly appealed the \$22,000 sanction because, as we noted, Iron Waffle “[made] no argument [in its brief] as to why the contempt order should be reversed [and] [i]ssues not briefed on appeal are waived.” *Id.* Iron Waffle’s attempted appeal of this judgment is untimely. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (providing that the deadline to file a notice of appeal in a civil case is 60 days after entry of judgment).

interpretation proposed by appellants would result in placing severe limits on the [district] court's ability to induce compliance with its lawful orders. We do not read Minn. Stat. § 588.10 to so restrict the [district] court's civil contempt powers.

Id.

Here, the district court's contempt order was not punitive or criminal. The purpose of the district court's contempt order was to compel Iron Waffle's compliance with its orders through the imposition of sanctions, not to punish Iron Waffle for past behavior. Because Iron Waffle was not found to be in criminal contempt, section 588.10 does not restrict the district court's power to impose sanctions. We therefore hold that Minnesota Statutes section 588.10, which authorizes the district court to impose a fine for a person adjudged guilty of contempt, is limited to the criminal contempt context and does not apply to civil contempt sanctions.

Having concluded that Minnesota Statutes section 588.10 does not preclude the district court from imposing civil contempt sanctions of more than \$250 per day, we next turn to the second part of the inquiry and consider whether the district court's sanction constitutes an abuse of discretion under these facts. *See Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019) (noting that we review the district court's contempt order for an abuse of discretion).

District courts possess inherent authority to impose sanctions as necessary to protect their "vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws." *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118

(Minn. 1995) (quotations omitted). A party may be held in civil contempt when the party “has acted contumaciously, in bad faith, and out of disrespect for the judicial process.” *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. Dec. 15, 2015). “The power to punish for contempt is an inherent power of constitutionally created courts in Minnesota.” *Sports & Health Club, Inc.*, 392 N.W.2d at 336 (citation omitted). Thus, “[t]he contempt power exists independent of the contempt statutes,” and is “essential to the effectiveness of all other court powers.” *Id.* (quotations and citations omitted).

The Minnesota Supreme Court articulated the minimum requirements, known as the *Hopp* factors, that a civil contempt proceeding must meet:

- (1) the court has jurisdiction over the subject matter and the person;
- (2) a clear definition of the acts to be performed;
- (3) notice of the acts to be performed and a reasonable time within which to comply;
- (4) an application by the party seeking enforcement giving specific grounds for complaint;
- (5) a hearing, after due notice, to give the nonperforming party an opportunity to show compliance or the reasons for failure;
- (6) a formal determination by the court of failure to comply and, if so, whether conditional confinement will aid compliance;
- (7) an opportunity for the nonperforming party to show inability to comply despite a good faith effort; and
- (8) the contemnor’s ability to gain release through compliance or a good faith effort to comply.

Swancutt, 551 N.W.2d at 223 (citing *Hopp*, 156 N.W.2d at 216-17).

Each *Hopp* factor is satisfied here. Neither party challenges the district court’s jurisdiction. In its order granting MDH’s motion for a temporary injunction, the district

court provided Iron Waffle with a clear definition of the acts it needed to perform, as well as notice of the acts to be performed. Despite the district court's clear orders, it is uncontested that Iron Waffle continued operating its business in violation of the district court's orders. Section 157.16 requires food-and-beverage service establishments, such as Iron Waffle, to be licensed. Minn. Stat. § 157.16 (2022). Iron Waffle flouted the district court's orders by continuing to operate its business without a license. MDH then filed its contempt motion. After providing notice that a \$2,000 per day sanction would be applied until Iron Waffle complied and after a hearing, the district court granted the motion and determined that Iron Waffle was in constructive civil contempt for failing to abide by the district court's orders. Iron Waffle did not make a showing that it could not comply with the orders despite a good-faith effort. Indeed, Iron Waffle did not dispute the violations. The district court made a formal determination that Iron Waffle violated its orders and that contempt sanctions were appropriate. Given this record, we are satisfied that the procedural safeguards were met.

Iron Waffle does not claim that the district court failed to satisfy the requirements outlined in *Hopp*. Instead, Iron Waffle argues that the district court should have required MDH to provide proof of Iron Waffle's earning capacity and financial status to justify such a large contempt sanction. This assertion implicates the seventh *Hopp* factor, which requires the district court to provide Iron Waffle with an opportunity to show that it cannot comply with the district court's order. The burden of proving an inability to comply rests with the contemnor. *Hopp*, 156 N.W.2d at 217. Iron Waffle did not provide *any* evidence showing that it could not comply. And the district court does not have to evaluate the

contemnor's ability to pay when ordering civil contempt sanctions if the issue is not raised by the party. *See id.* (placing burden of proof on litigant). We therefore reject this argument.

As stated, the district court had broad discretion under its inherent authority to issue appropriate civil contempt sanctions to compel compliance with its orders. Upon a careful review, we discern no abuse of discretion in the district court's imposition of sanctions in this case. The record shows that MDH conducted on-site inspections at Iron Waffle in August, September, and October 2020, and discovered that Iron Waffle was running the restaurant in violation of the executive orders. Iron Waffle did not respond to MDH's repeated warnings that it was at risk of losing its food-and-beverage license and incurring penalties. In December 2020, MDH revoked Iron Waffle's license for operating in violation of the executive orders. Iron Waffle continued to operate the restaurant, permitted its employees to work without face coverings, and displayed a sign stating that masks were optional for customers.

Based on this record, we conclude that the district court appropriately exercised its discretion under its inherent authority by imposing sanctions to ensure Iron Waffle complied with the district court's orders. The district court's broad discretion to impose sanctions is limited to the extent that certain procedural requirements must be met before a sanction may be imposed. *See id.* at 216-17. As discussed above, the district court satisfied these procedural requirements. As a result, we discern no abuse of discretion in the district court's decision to impose civil contempt sanctions because of Iron Waffle's continued violations of the district court's orders.

DECISION

We hold that section 588.10 does not restrict the district court's authority to impose civil contempt sanctions to compel compliance with its orders and that the district court did not abuse its discretion here by imposing sanctions for constructive civil contempt under its inherent authority. We also decline to consider Iron Waffle's arguments related to MDH's decision to revoke Iron Waffle's food-and-beverage license because it forfeited these arguments by failing to pursue an administrative appeal of MDH's decision. We therefore affirm.